

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

HENRY GEMENY; ISABELLE GEMENY,
Plaintiffs-Appellants,

v.

No. 99-1174

WAL-MART STORES, INCORPORATED,
Defendant-Appellee.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
J. Frederick Motz, Chief District Judge.
(CA-98-1008-JFM)

Submitted: October 29, 1999

Decided: November 22, 1999

Before WILKINS and KING, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Rodney M. Gaston, Towson, Maryland, for Appellants. Jeffrey M.
Kotz, JEFFREY M. KOTZ, P.A., Towson, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Henry and Isabelle Gemeny appeal from the district court's order entering judgment after a jury trial on their negligence action. The Gemenys contend, first, that the district court erred in admitting certain photographs of the accident scene. Our review of the record discloses that any prejudice resulting from the introduction of the photos was cured by the district court's unambiguous instructions to the jury not to consider the depiction of the warning cones as proof that they were in place at the time of the accident. Accordingly, we find that the district court did not abuse its discretion by allowing them into evidence. See Benedi v. McNeil-P.P.C., Inc., 66 F.3d 1378, 1383 (4th Cir. 1995). The Gemenys also argue that the district court erred in denying their motion for judgment notwithstanding the verdict, Fed. R. Civ. P. 50(b), on the issue of assumption of the risk. We find that there was evidence upon which the jury could reasonably find that Gemeny assumed the risk of his fall. See Abasiekong v. City of Shelby, 744 F.2d 1055, 1059 (4th Cir. 1984) (the district court's denial of a motion for JNOV will be affirmed if, "giving [the non-movant] the benefit of every legitimate inference in his favor, there was evidence upon which a jury could reasonably return a verdict for him"). Accordingly, we affirm the denial of the Gemenys' motion on the reasoning of the district court. See Gemeny v. Wal-Mart Stores, Inc., No. CA-98-1008-JFM (D. Md. Jan. 25, 1999).^{*} We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

AFFIRMED

^{*}Although the district court's order is marked as "filed" on Jan. 21, 1999, the district court's records show that it was entered on the docket sheet on Jan. 25, 1999. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date that the judgment or order was entered on the docket sheet that we take as the effective date of the district court's decision. See Wilson v. Murray, 806 F.2d 1232, 1234-35 (4th Cir. 1986).